IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 305 OF 1996

Union of India ..Appellants

versus

M/s. Lalitkumar Ratanshi & Co. ..Respondents

Mr. A. N. Samant for the Appellants.

None for the Respondents.

CORAM: D.G.DESHPANDE,J.

DATED: 4TH MAY, 2005

ORAL ORDER :

1. Heard Mr. Samant for the Appellants. Nobody is present for the Respondents, though served.

2. This Appeal is filed by the Union of India - Appellants against the order of the RACT, Mumbai dated 9.11.1995.

3. Mr. Samant raised only two contentions. Firstly, according to him the RR issued by the Railway was "said to contain". The second contention was that the Tribunal awarded interest at the rate of 12% per annum

and according to him it should be 9% per annum in view of the Judgment of this Court reported in **2005(1) Mh.L.J. 165 Maharashtra State Electricity Board vs. Union of India.** It was a claim against the Railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed same judgment earlier, therefore the rate of interest is required to be reduced to 9% per annum. Therefore, he contended that firstly the appeal should be allowed so far as claim on merits is concerned, or alternatively interest rate should be reduced.

4. So far as contention of Mr. Samant of RR with the endorsement "said to contain", the same is required to be rejected.

5. A consignment of 120 bags containing 120 qunintals of wheat under RR No. 781838 dated 20.11.1978 was booked by the respondents. The consignment was never delivered to the respondents. Inspite of repeated enquires the consignment was reported to have not arrived at destination. The non delivery of the goods is attributed to the negligence and misconudct on the part of the appellants. The Tribunal framed as many as 7 issues but the issue regarding RR "said to contain" was

not at all framed. The Tribunal found that there was total negligence of the railway. Therefore, in the circumstances the defence of "said to contain" is not available to the appellants.

6. So far as interest part is concerned, contention of Mr. Samant is required to be accepted in view of the judgment of this court, as stated above.

7. In the result, I pass the following order:

ORDER

. The appeal is partly allowed.

. The principal amount awarded will carry interest at the rate of 9% per annum from the date of application till realisation or till date of payment or deposit with proportionate costs.

. Amount that is found in excess after the aforesaid calculations shall be returned to the appellants. Respondents will be permitted to withdraw the amount as per the calculations.

. No order as to costs.

4.5.2005 (D.G. DESHPANDE,J.)